IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8195 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

1 to 5 : NO

SURAT MAHILA NAGRIK SAHAKARI BANK LTD

Versus

MAMTABEN MAHENDRABHAI JOSHI

Appearance:

MR VITTHALBHAI PATEL, Sr. Advocate with
MR DEEPAK V PATEL for Petitioner
MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2000

ORAL CAV JUDGEMENT

Heard the learned advocates for the respective parties.

By means of filing the present writ petition, the petitioner-Surat Mahila Nagrik Sahakari Bank Limited

[hereinafter referred to as, `the petitioner-Bank'] seeks to challenge the order passed by the Labour Court, Surat in T-Application No. 249 of 1992 under the provisions of the Bombay Industrial Relations Act, 1946 [hereinafter referred to as, `the Act'] dated 11th February, 1998 wherein the Labour Court has granted reinstatement of respondent workman in service with continuity and full backwages with consequential benefits and costs of Rs. 500/=. The said Award of the Labour Court dated 11th February, 1998 was challenged by the petitioner-Bank before the Industrial Tribunal, Surat in Appeal (IC) No. 2 of 1998. While dismissing the said appeal, the Tribunal vide Order dated 31st August, 1999 has confirmed the order passed by the Labour Court dated 11th February, 1998. Feeling aggrieved and dissatisfied with the said orders of the Courts below, the petitioner-Bank has moved this Court by filing the present writ petition.

The respondent-workman had filed affidavitin-reply dated 19th November, 1999 bringing on record copy of the appointment order as a Trainee and orders on temporary appointment as Clerk-cum-Cashier and a copy of application No. 249 of 1992 alongwith written statement filed by the petitioner-Bank as well as deposition of respondent-workman and witnesses of the petitioner-Bank. The respondent-workman has also annexed copies of some of the appointment orders made in favour of Darmishtaben, Jigishaben, Punika K. Patel, Asha K Pachchigar, Vaishali K. Bookseller. Against the said reply, petitioner-Bank had filed affidavit dated 10th January, 2000.

In the present petition, by an order dated 26th October, 1999, rule has been issued and ad-interim relief in terms of paragraph 14-B has been granted subject to compliance of the provisions of Sec. 17-B of the Industrial Disputes Act. Thereafter, at the request of the learned advocate, the order made earlier in the day was recalled and the following order has been made.

> `Rule. Learned advocate Mr. J.H Singh appears and waives service of rule on behalf of the respondent. Notice as to interim relief returnable on 2nd November, 1999. There shall be ad-interim relief in terms of paragraph 14-B.'

When the matter was called out on 11th April, 2000, the learned advocates appearing for the respective parties gave consent for final hearing and disposal of the matter. Hence, Rule returnable today. Learned advocates Mr. A.K Clerk waives service of rule on behalf

of respondent-workman. With the consent of the learned advocates, this matter is heard and finally decided today.

The petitioner-Bank is a registered Cooperative Bank under the relevant laws and is governed by the Bombay Industrial Relations Act, 1947 and the Model Standing Orders framed for the Banking Industry. The petitioner-Bank has one of its Branches at Bombay Market at Surat. The said Bombay Market Branch employs only 19 employees. According to the petitioner-Bank, the respondent-workman was initially appointed as a Trainee on payment of sum fixed between 15th March, 1990 and 21st March, 1991. The said appointment as a Trainee was made under six separate orders issued by the Bank, each for a duration of two months. Later on, the respondent was appointed for a period of one month as a Temporary Junior Clerk-cum-Cashier in the Bombay Market Branch on the terms and conditions mentioned therein, due to increase in the workload. On expiry of the said period of one month, fresh appointment order was issued for a further period of one month, and like that, she was given appointment orders on each successive month with a notional break. Her last appointment order was for a period of one month from 4th January, 1992 to 3rd February, 1992. Thus, in all, respondent workman performed her duties for a period of ten months as a Temporary Clerk and for such appointment, 10 separate appointment orders were given to her and she had endorsed her signature thereto in token of her having accepted the terms and conditions stipulated therein. According to the petitioner-Bank she was not appointed on any permanent post and her every appointment was a new appointment and she was engaged due to workload in the Bombay Market Branch.

From the record, it appears that the respondent workman had challenged the termination order dated 3rd February, 1992 by filing T-Application No. 249 of 1992 before the Labour Court, Surat. The petitioner has submitted the written statement vide Exh.9 and the respondent workman had produced certain documents vide Exh. 3, 7, 10, 11, 30 and 31. Thereafter, the respondent workman was examined before the Labour Court vide Exh. 13 and purshis was filed to close her evidence vide Exh. 32. The petitioner-Bank had examined one Pratibha Upendrabhai vide Exh. 34 and certain documents were produced by the Bank vide Exhs. 38, 45 to 48 and 49. Thereafter, vide Exh. 50, a closing purshis was filed by the petitioner-Bank for not leading further evidence in the said matter. The petitioner-Bank has

submitted written arguments vide Exh. 54 and the respondent workman has produced list of authorities vide Exh. 53 and thereafter, the Labour Court has examined the merits of the matter and ultimately came to the conclusion that respondent workman had completed 240 days continuous service and undisputedly the petitioner-Bank had not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947, and therefore, the termination order has been set-aside with a direction to the petitioner-Bank to reinstate the workman concerned in service with continuity and with all consequential benefits and backwages for the interim period.

Feeling aggrieved and dissatisfied with the said Award dated 11-2-1998 made by the Labour Court Surat, the petitioner-Bank had filed an Appeal before the Industrial Tribunal, Surat being Appeal (IC) No. 2 of 1998, which was dismissed by the Tribunal vide Order dated 31st August, 1999.

Learned Sr. Advocate Mr. Patel appearing for the petitioner-Bank has submitted that the respondent workman had served the Bank for two different period the first period being with effect from 13-3-1990 to 21-3-1991 i.e, 12 months as a Trainee by six separate orders each of two months and thereafter as a temporary Clerk with effect from 23.3.1991 to 3-2-1992; by separate independent orders each for one month and after providing notional breaks. Mr. Patel submitted that in each order of appointment, the date of termination of service has been specifically mentioned and by the afflux of time, the said service stands terminated automatically, without any positive order of termination being made by the petitioner-Bank. According to Mr. Patel, since the service of respondent workman stands terminated by afflux of time without there being any positive order of termination, the case of the respondent workman is covered under Sec. 2 (oo) (bb) of the Industrial Disputes Act, 1947, and therefore, the said termination is not a `retrenchment' within the meaning of Section 2 (oo) of the I.D Act and hence provisions of Sec. 25-F shall not be applicable to the facts of the present case. Mr. Patel further submitted that the respondent workman has not worked as an temporary employee for 12 calender months, however, in fact she had worked for only 10 months, and therefore, though the respondent workman had completed 240 days continuous service but for getting the benefit under Sec. 25-F, the total service of 12 months is required to be proved and in absence of of that, the respondent workman is not entitled to any benefit under Sec. 25-F of the Industrial Disputes Act. Mr. Patel

further argued that there are two different periods viz., first from 13th March, 1990 to 3rd February, 1992 and this period was a training period and the subsequent period was as a temporary employee, and therefore, both services viz., as a Trainee as well as temporary service cannot be clubbed together for getting the benefit under the provisions of Sec. 25-F of the Act. Mr. Patel further argued that the respondent workman was not a permanent employee and there is a separate mode of recruitment in the petitioner-Bank wherein initially an employee is appointed as a Trainee and thereafter given temporary appointment and after that he is appointed as a Probationer, and after satisfactory completion of probation period, employee is treated as a permanent employee of the Bank. So, according to Mr. Patel, there are four steps or stages which are required to be completed by the employee to reach the stage of permanency in the Bank. Mr. Patel further submitted that temporary appointment was given to the respondent workman due to the over workload and that temporary appointment was not extended since the said workload was over. Therefore, termination of workman's service by the afflux of time does not mean `retrenchment' and the respondent workman is not entitled to any benefit. He further submitted that the approach notice was given by the respondent workman to the petitioner Bank and the said notice was replied to by the petitioner-Bank and it was mentioned by the petitioner-Bank that during the training period and also during temporary employment, the work of respondent-workman was not found satisfactory, and therefore, the termination was not renewed or extended by the petitioner-Bank. He further submitted that in the meanwhile, the workload was also over and no appointment was made on long term basis and therefore considering these three reasons, the services of respondent-workman came to an end by the afflux of time. Mr. Patel further submitted that the petitioner-Bank's Head office and different branches have distinct entity and its establishment is also different. He further submitted that some of the workmen were given temporary appointment but in different Branch but not in the Bombay Market Branch where the respondent was working. He submitted that the Labour Court as well as Industrial Tribunal has committed gross error in coming to the conclusion that the respondent workman was on permanent post, by clubbing both the periods i.e., as a Trainee as well as temporary and has not appreciated the submissions that the respondent-workman has not completed 240 days continuous service within a period of 12 months which is required to be completed, entitling the respondent to the benefit under the provisions of Sec. 25F of the

Industrial Disputes Act, 1947. He further submitted that under the provisions of Bombay Industrial Relations Act, the employee has been defined under Sec. 3 (13)(b) which states that, `a person who has been dismissed, discharged or retrenched from employment or whose services have been terminated on account of any dispute relating to change in respect of which a notice is given or an application made under Sec. 42, whether before or after his dismissal, discharge, retrenchment or as the case may be, termination from employment. After reading the said definition, Mr. Patel emphasized that on 3rd February, 1992, services of the respondent-workman stood automatically terminated by the afflux of time and there was no order of termination issued by the petitioner-Bank against the respondent-workman, and therefore, it is not a case of termination by positive action by the petitioner-Bank, and therefore, according to his submission, even the respondent-workman has not satisfied the condition of `employee' defined under Sec. 3 (13)(b) of the BIR Act. Mr. Patel further submitted that Sec. 25-G of the I.D Act is also not applicable in the present case as there is agreement between the petitioner-Bank and the respondent-workman, and therefore, respondent-workman is not entitled to any benefit provided under Sec. 25F of the I.D Act. Mr. Patel further submitted that each month, the work of the respondent-workman was observed by the petitioner-Bank and necessary remarks in each order has been made by the petitioner-Bank on the orders of appointment as a Trainee. Mr. Patel further submitted that there was no continuous service, because each month fixed term appointment comes to an end on the expiry of the date and she has not completed 12 months' as a temporary employee, and therefore, provisions of Section 25 (B) (1) & (2) of the Industrial Disputes Act, 1947 are also not satisfied and merely non-renewal of contract of service cannot be given a meaning of `retrenchment' under Sec. 2 (oo) of the Act. Learned advocate, thus, submitted that the Labour Court has committed gross error which is apparent on the face of the record and the view taken by the Labour Court is contrary to the settled law laid down by the Apex Court and this Court can interfere with the order of the lower authority. Mr. Patel further submitted that the petitioner-Bank is a Cooperative Bank registered under the Gujarat Cooperative Societies Act and its establishment is regulated by the Bombay Industrial Relations Act, 1946 and the Model Standing Orders framed for the Banking Industry. In the Model Standing Orders, there is a classification of employees from Trainee, temporary, probation and then regular or permanent. Mr. Patel urged that while exercising the powers under Art.

226 & 227 of the Constitution, this Court can interfere with the orders of the lower authority if the said order is found to be contrary to the settled law. He submitted that there is no stigma against the respondent-workman but he admitted that the work of respondent-workman was not found satisfactory, and therefore, her period of appointment was not extended by the petitioner-Bank, and moreover, no appointment on the long term basis has been made thereafter in the Bombay Market Branch, and therefore, the petitioner-Bank has rightly not extended the period of appointment of the respondent-workman. He further submitted that the Labour Court has not decided the case on the footing that there was some malafide victimization and unfair labour practice as there was no pleading or proof produced or made by the respondent-workman before the Labour Court. Mr. Patel further submitted that the Labour Court has given wrong finding and that the Labour Court has no jurisdiction to go into the question of deciding the legality and validity of the termination order which was challenged by the respondent-workman under the provisions of Sec. 78 and 79 of the B.I.R Act, 1946.

In support of his arguments, Mr. Patel has relied upon judgments in the matter of -

(1) Madhya Pradesh Hasta Shilpa Vikas Nigam Limited v. Devendra Kumar Jain & Ors., reported in [1995 (I) SCC 638];

(2) Isha Steel Treatment, Bombay v. Association of Engineering Workers, Bombay & Anr., reported in AIR (1987) SC 1478;

(3) Birla VXL Limited v/s. State of Punjab & Ors., reported in [1991 (1) LLJ 220];

(4) Executive Engineer, Roads & Building vs. Rameshkumar K. Bhat, reported in [2000 (1) GLH 263];

(5) Kana Ruda Bharwad v. Gujarat Water Supply & Sewerage Board & Anr., reported in [1997 (1) GLH 190];

(6) Rajvi Amar Singh v. State of Rajasthan, reported in AIR 1958 SC 228;

(7) Workmen of American Express International Banking Corporation v. Management of American Express

International Banking Corporation, reported in AIR 1986 SC 458;

(8) Maharashtra State Electricity Board v. Suresh Vaidyanath Pagar & Anr., reported in 1996 (1) LLJ 935;

(9) Escorts Limited v. Presiding Officer & Another, reported in [1997 (11) SCC 521];

(10) Mr. Venugopal v. Divisional Manager-LIC, reported in Lab.IC (1994) 2 SCC p-323;

(11) State of Haryana v. Om Prakash & Another, reported in (1998) 8 SCC 733;

(12) Nilesh Bhatt & Ors. vs. Administrative Officer, Nagar Pradhamik Shikshan Samiti & Ors., reported in 1996 (1) GLH p-108;

(13) Sur Enamel & Stamping Works Limited v. The Workmen, reported in AIR 1963 SC 1914;

(14) Cental Bank of India v. S. Satyam & Ors. reported in AIR 1996 SC 2526;

(15) Uptron India Limited v. Shammi Bhan & Another, reported in (1998) 6 SCC 538;

(16) Ashokkumar K. Pandey v. Principal, Kendriya Vidyalaya, Rajkot & Another, reported in AIR 1998 Lab. IC p-692;

(17) Purshottambhai R. Kachhadia v. State of Gujarat & Ors., reported in 2000 (1) GLH 553;

(18) Eversta v. District Labour Officer, reported in 1999 (11) LLJ 851 (Kerala);

(19) Hari Vishnu Kamath v. Ahmad Ishaque, reported in AIR 1958 Cal. 273, [paragraph 8 and 11];

Mr. A.K Clerk, learned advocate appearing on behalf of the respondent-workman has submitted that the period of working of the respondent-workman as a Trainee employee as well as temporary employee is not disputed by the petitioner-Bank, and therefore, the entire period from 13th March, 1990 to 3rd February, 1992 was in service with the petitioner-Bank. Mr. Clerk further submitted that the petitioner Bank is having Head Office

at Surat and also three branches in the very City and the petitioner-Bank is not having separate establishment. Mr. Clerk submitted that the point of separate establishment raised by the petitioner-Bank was not raised before the Labour Court, and therefore, the same cannot be raised here before this Court for the first time. Mr. Clerk submitted that the Labour Court as well as Industrial Tribunal have given concurrent finding of fact, and therefore, this Court in exercise of powers under Art. 226 & 227 of the Constitution cannot go against the same when there is no infirmity in the order made by the lower authorities. He submitted that the finding given by the lower authority is not baseless or perverse or contrary to law. Mr. Clerk submitted that on the contrary, finding given by both the Courts is based on legal evidence and it is a reasoned order. Mr. Clerk submitted that if the work of the respondent-workman was not found satisfactory, she would have definitely been served with memo or chargesheet but there is no such remark to this effect, however, simple one line remark is made on each order of appointment. Mr. Clerk pointed out that letters of appointment does not bear any date and some of the portion is also found blank. Mr. Clerk submitted that such type of appointment orders are made by the petitioner-Bank with a view to misuse and abuse the powers in arbitrary manner so that the workman may not get statutory protection under the provisions of the Industrial Disputes Act. MR. Clerk further submitted that it is second theory of hire and fire and such theory has been condemned and deprecated by the Apex Court in its various decisions. Mr. Clerk submitted that if service of any permanent employee is terminated under the provisions of Service Rules or Standing Orders or condition of service then such rules have been considered by the Apex Court in its various decisions and held to be ultra vires and contrary to the provisions of Sec. 23 of the Contract Act against the public policy. Mr. Clerk also submitted that provisions of Sec. 2 (oo)(bb) has been enacted with a view to see that in a regular appointment, if such stipulation is made and a periodical order for regular appointment has been given, then that should have to considered under Clause (bb) otherwise in case of daily rated employees, casual employees, temporary employees, ad hoc employes are not covered within the exception of clause (bb) of the I.D Act. Mr. Clerk also submitted that this statutory exception not considered to be retrenchment is otherway an old policy of hire and fire has been introduced by the legislative power to give a handle to the employer to exploit the workman and create a situation in favour of the employer by giving such

periodical appointments, a workmen cannot have a right either to be confirmed or entitle to any protection under the statutory provision. This is not the object of Sec. 2 (oo) (bb) to deprive the workman of his right which has been protected since 1947 under the provision of Sec. 2 (oo) read with Sec. 25-F of the Industrial Disputes Act. He also submitted that if the submissions of learned advocate Mr. Patel are accepted, then naturally the employer will give such type of periodical orders rather than appointing the persons on long term basis. Mr. Clerk submitted that this is a device which has been adopted by the employers these days. He pointed out that even in case of necessity also, such type of periodical appointment orders are issued just to deprive the workman of his statutory right. He submitted that in fact the respondent workman had put in service of 351 days during the calender of 12 months as a Trainee and put in 309 days' service as a temporary employee, and therefore, the respondent-workman is entitled to the benefit of Sec. 25-F of the I.D Act. Mr. Clerk submitted that this is not the intention of the legislation and nor the object of such exception which has been made out under Section 2 (oo)(bb) of the I.D Act. He submitted that this is an unfair labour practice adopted by the employer under Schedule-V, Item No. 11 of the I.D Act. He submitted that the petitioner-Bank has not raised dispute about Sec. 2 (oo)(bb) in its written statement, and therefore, the said question now cannot be permitted to be raised here. He also submitted that `trainee' is covered within the definition of `employee' and after completion of temporary employment, respondent-workman becomes permanent employee. He also submitted that this is not a bona fide appointment on periodical basis wherein only specific time period has been mentioned but no specific work has been mentioned in the appointment orders. According to him, due to the workload the post was created and in that post, the respondent-workman was appointed. He also submitted that there are no rules for recruitment framed by the petitioner-Bank. He also submitted that in identical orders issued by the petitioner-Bank in favour of other lady employees, those all ladies have been confirmed subsequently and only the respondent's service has been terminated and this termination is nothing but discrimination and unfair labour practice adopted by the petitioner-Bank. He also submitted that in such type of appointments, a workman has no choice except to accept the terms. He also submitted that the appointment has been made by the Head Office of the petitioner-Bank and not by the Bombay Market Branch, and therefore, if any other appointment is made subsequently, than the provisions of Sec. 25-H will

be attracted in the present case. Mr. Clerk thereafter relied upon the provisions of Sec. 25 (b)(2) wherein it is mentioned that workman shall have to complete 240 days continuous service within a period of 12 months, meaning thereby that it is not necessary that he should remain in service for 12 months period preceding the date of the termination. He submitted that the decision in the matter of Sur Enamel [Supra} has been considered by the Apex Court in subsequent decision in case of Mohanlal v. Bharat Electronics Limited [AIR (1981) SC 1253]. He also submitted that Section 25 (b)(2) itself is very clear that if a workman has not completed one year continuous service, as provided in Sub-Sec. 1 then if workman has completed 240 days actual service, then he should be deemed to be in continuous service of one year, and therefore, the argument of Mr. Patel that the workman should have to remain in service for 12 months period for getting benefit under the provisions of Sec. 25-F is totally misconceived and the said argument is contrary to settled law laid down by the Apex Court, and it is contrary to the provisions of Sec. 25 (b) (2) of the I.D Act. He also submitted that the workman was in continuous employment and she was serving on a permanent post and this fact has come in evidence in the matter when one Hansaben whose termination was challenged by her before the Labour Court, wherein the settlement was arrived at between the said Hansaben and the petitioner-Bank, and thereafter, she was appointed in place of respondent-workman. This fact was admitted by the witness of the petitioner-Bank in her evidence and in terms it is stated that it is true that the case of Hansaben was proceeded in the Labour Court, Surat which was subsequently settled between Hansaben and the petitioner-Bank and thereafter said Hansaben was appointed in place of Mamtaben Joshi [respondent herein], and therefore, according to Mr.Clerk, Hansaben was appointed in place of Mamtaben and subsequently, Ashaben Pachchigar, Dharmisthaben R. Jinwala, Vaishaliben K. Bookseller and Jigishaben C. Panwala were made permanent with effect from 20.8.1992, 6.11.1995, 3.4.1995, 29.11.1994 and 26.2.1996 respectively. Mr. Clerk submitted that all these five lady employees were initially appointed as a Trainee for a period of 1-2 years respectively and they were made temporary and after a period of six months probation, they were appointed on permanent posts. Mr. Clerk pointed out that except Ashaben K. Pachchigar, rest of the four lady employees were junior to the respondent-workman because respondent-workman was appointed as a Trainee on 1.1.1990 and whereas other four ladies viz., Punitaben was appointed as a Trainee on 29.10.1991, Dharmistaben on

24.11.1990, Vaishaliben on 10.11.1990 and Jigishaben Panwala on 26.6.1992. Mr. Clerk submitted that not only all these four ladies are junior to the respondent-workman but they were appointed subsequent to the termination of the respondent-workman. Therefore, according to Mr. Clerk, it is a clear case of victimization, unfair labour practice and abuse of powers, and therefore, provisions of Sec. 2 (oo)(bb) are not applicable to the present case. Mr. Clerk submitted that the Labour Court has rightly set-aside the termination order and the Award made by the Labour Court is also rightly confirmed by the Industrial Court, and therefore, when the two courts have given concurrent finding in respect to the facts of the case, then this Court cannot interfere the same in exercise of powers under Art. 226 & 227 of the Constitution, and therefore, according to him, this petition is required to be dismissed.

Now, I am considering the authorities which have been relied upon by the learned Sr. Advocate Mr. Patel in respect to the various points raised by him in the petition as well as during the course of his arguments. In the matter of Madhya Pradesh Hasta Shilpa Vikas Nigam Limited v. Devendra Kumar Jain & Ors., reported in [1995 (I) SCC 638] it is held that, `temporary appointment made on temporary basis, services being terminable without notice or assigning reason. In such a case following the formalities of Article 311, held, not necessary for termination.' In the matter of Isha Steel Treatment, Bombay v. Association of Engineering Workers, Bombay & Anr., reported in AIR (1987) SC 1478, it has been held that, `a firm carrying on the business of metal processing i.e., heat treatment of metals, had two factories. Both the factories were situate only about 200 yards away from each other. Both the units had independent location, separate factory licences and separate municipal licences. The two units also had separate stores and maintained separate accounts and balance sheets. ...On finding that the workman of one of the unit were wilfully slacking their work and that there was growing indiscipline amongst them, the firm decided to close down the unit. Closure compensation was offered to the entire staff of the unit. Industrial dispute was raised by the workman who claimed that Sec. 25-G was attracted as the two units had functional integrality and were for all purposes one establishment; case of bonafide closure of an independent unit of business to which Sec. 25-G had no application from the fact that the two units were situate at a distance of 200 meters from each other, the fact that both the units were controlled by the same

employer and that the business of heat treatment processing carried on in the two units was identical, it could not be said that the two units were really integral.' In case of Birla VXL Limited v/s. State of Punjab & Ors., reported in [1991 (1) LLJ 220], it has been held that, `termination of service - By terms of appointment order employer entitled to bring temporary employment to end - Such termination is not open to challenge when it is not for any misconduct and no stigma cast.' In case of Executive Engineer, Roads & Building vs. Rameshkumar K. Bhat, reported in [2000 (1) GLH 263] this Court [Coram : D.C Srivastava, J.] has held that, `respondent was appointed as a `Tracer' on purely temporary basis - Government stopped paying grant - One division and three sub-divisions were closed - Section 25-F would not apply to person employed for fixed term Unless the power is misused or vitiated by its malafide exercise, the termination cannot be held illegal - From the terms of appointment letter there does not seem any use of colourable exercise of power.' In this case, this Court has considered and followed the two decisions of the Apex Court in the matter of State of Rajasthan v. R.S Gahlot [Supra} and M. Venugopalan v. Divisional Manager of LIC, [Supra]. In the matter of Kana Ruda Bharwad v. Gujarat Water Supply & Sewerage Board & Anr., reported in [1997 (1) GLH 190], this Court [Coram : S.K Keshote, J.] has held that, `the termination on the ground of non-availability of work, no writ can be issued to keep a petitioner in service when appointment is for a particular project. No notice is necessary before termination.' It is also held that employer is entitled to terminate the service of its employee in terms of the order of appointment. In the matter between Rajvi Amar Singh v. State of Rajasthan, reported in AIR 1958 SC 228, it has been held that, `on the construction of the Covenant, Government orders and notifications that no question of reduction in rank could arise and so Art. 311 was not attracted. All his previous postings in the new State were purely transitional and temporary and so far as Article XVI (1) of the Covenant was concerned, its guarantee had been fulfilled.' In case of Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, reported in AIR 1986 SC 458, it has been held that, `Secs. 25F and 25-B (2) - Workman Continuous service Actual working days - Calculation of Sundays & other paid holidays can be taken into account.' And it is also further held that, `In view of Sub-section (2) of Sec. 25-B of the Act, the workman shall be deemed to be in continuous service if he has actually worked under the employer for particular period.' In the matter of

Maharashtra State Electricity Board v. Suresh Vaidyanath Pagar & Anr., reported in 1996 (1) LLJ 935, it has been held by the learned Single Judge of the Bombay High Court that, `Section 2 (oo)(bb) - Termination of service. Appointment purely on temporary basis for three months. Termination at the end of the period. Stipulation that service shall be continued if three conditions are fulfilled. Case held to be squarely covered under Clause (bb) of Section 2 (oo) of the Act. In the case of Escorts Limited v. Presiding Officer & Another, reported in [1997 (11) SCC 521], it has been held that the termination of service - Validity Temporary appointment for a specified period of two months - Terms of appointment enabling the power to terminate the service at any stage without assigning any reason. In such circumstances, termination of service under the said terms even though effected before the expiry of the specified period, held, did not amount to retrenchment. Hence, did not attract Sections 25-F and 25-G of the Industrial Disputes Act, in view of Section 2 (oo)(bb). In this matter, the Apex Court has considered the decisions rendered in the matter of Mr. Venugopal v. Divisional Manager, Lab.IC (1994) 2 SCC. In case of State of Haryana v. Om Prakash & Another, reported in (1998) 8 SCC 733, the Apex Court has held that, `this is a case in which a daily rated workman himself ceases to report for duty and remained absent for about three long years. Employer having done nothing, whatsoever to put to an end to his employment and in such a case, held that it does not fall within the meaning of `retrenchment' under Section 2 (oo). In such cases, in absence of evidence to show that he had worked for 240 days, the Labour Court erred in coming to the conclusion that he had worked for 240 days.' In the matter between Nilesh Bhatt & Ors. vs. Administrative Officer, Nagar Pradhamik Shikshan Samiti & Ors., reported in 1996 (1) GLH p-108, the learned Single Judge of this Court has held that, `appointments on adhoc basis or made through the backdoor for a fixed term do not ripen into regular service to claim substantive status merely because they are continued for a long period. A holder of a post appointed on a temporary basis does not acquire a substantive right to the post, even though the post is permanent. .. Termination of an incumbent appointed for a fixed term on a temporary basis can be effected without notice or hearing - principles of natural justice need not be followed.' In the matter of Sur Enamel & Stamping Works Limited v. The Workmen, reported in AIR 1963 SC 1914, it has been held that, `..under Section 25-F, Industrial Disputes Act, 1947, only a workman who has been in continuous service for not less than one year

under an employer is entitled to its benefit. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calender months and next that during those 12 calender months had worked for not less than 240 days. Therefore, the workman who has not at all been employed for a period of 12 months would not satisfy the requirements of Sec. 25-B and would not be entitled to the benefit under Section 25-F of the Industrial Disputes Act, 1947.' In the matter between Central Bank of India v. S. Satyam & Ors. reported in AIR 1996 SC 2526, it has been held that, `re-employement of retrenched workman Chapter V-A of the Act providing for retrenchment Enacted for all cases of retrenchment and not for benefit of workmen to whom Sec. 25-F applies. Thus, application of Sec. 25H cannot be restricted only to one category of retrenched workmen.' In the matter between Uptron India Limited v. Shammi Bhan & Another, reported in (1998) 6 SCC 538, learned advocate Mr. Patel has placed reliance upon paragraph 32, wherein it has been held that, `..The Contract of employment referred to in the earlier part of clause (bb) has to be the same as is referred to in the latter part. This is clear by the use of words, `such contracts' in the earlier part of this clause. What the clause, therefore, means is that there should have been a contract of employment for a fixed term between the employer and the workman containing a stipulation that the services could be terminated even before the expiry of the period of contract. If such contract, on the expiry of its original period, is not renewed and the services are terminated as a consequence of that period, it would not amount to `retrenchment'. Similarly, if the services are terminated even before the expiry of the period of contract but in pursuance of a stipulation contained in that contract that the services could be so terminated, then in that case also, the termination would not amount to `retrenchment'. This view finds support from the decision of this Court in the matter of Escorts Limited v. Presiding Officer [Supra]. In the matter of Ashokkumar K. Pandey v. Principal, Kendriya Vidyalaya, Rajkot & Another, reported in AIR 1998 Lab. IC p-692, the learned Single Judge of this Court[Coram : S.K Keshote, J.] has held that, `termination of service natural justice - petitioner teacher appointed on ad hoc and temporary basis - no notice or opportunity of hearing is required to be given before terminating his service.' In case of Purshottambhai R. Kachhadia v. State of Gujarat & Ors., reported in 2000 (1) GLH 553, the learned Single Judge of this Court [Coram : R.K Abichandani, J.] has held that, `Section 2 (oo)(bb) and 25-F - Termination

of daily wagers - Appointed for a fixed period and given break - Posted on different works while working as a work charge employee - Contract of employment terminated after coming into force of Sec. 2 (oo) (bb) - Irrespective of length of period, termination would not amount to retrenchment if there is a provision under such contract for termination of employment - By mistake if authority referred to payment of compensation u/s. 25-F, it cannot create any right in favour of employee dehors the provisions of Sec. 2 (oo) (bb) - Erroneous offer of retrenchment compensation, would not improve legal position.' In the said decision, almost all the decisions cited and relied by Mr. Patel have been considered by the learned Single Judge, namely in the matters between Himanshu Kumar Vidhyarthi [Supra]; of Escorts Limited [Supra]; of Venugopal v. Divisional Manager [Supra], etc. Learned advocate Mr. Patel has also relied upon one decision of Kerala High Court in the matter between Eversta v. District Labour Officer, reported in 1999 (11) LLJ 851 (Kerala) wherein it has been held that, `the definition of `Workman' in Section 2 (s) in connection with persons employed in an industry falls in three parts. The first part of the definition gives the statutory meaning of workman. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, persons who have been dismissed, discharged or retrenched in connection with an industrial dispute; or whose dismissal, discharge of retrenchment has led to an industrial dispute. This part specifically excludes the categories of the persons specified in clauses (i) to (iv) of Section 2 (s). The third part connotes that even if a person satisfied the requirements of any of the first two parts, if he falls in any of the four categories in the third part, he shall be excluded from the definition of `workman'. In our opinion, the appellant, having voluntarily tendered his resignation pursuant to a scheme for voluntary retirement, the resignation having been accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the appellant, he cannot be treated as a `workman' coming under Sec. 2 (s) of the Industrial Disputes Act.' Mr. Patel has relied upon pronouncement of Calcutta High Court in the matter between Hari Vishnu Kamath v. Ahmad Ishaque, reported in AIR 1958 Cal. 273, imn paragraph 8 and 11 of the decision, in short, has submitted that, `writ of certiorari will be issued for correcting errors of jurisdiction when an inferior Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it and also when it acts illegally in the

exercise of its undoubted jurisdiction as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. He also submitted that writ of certiorari if it is manifest error apparent on the fact of the proceeding eg., when it is based on clear ignorance or disregard of the provision of law. It says that what is an error apparent on the fact of the record cannot be denied precisely or exhaustively there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the facts of each case.'

Mr. Clerk, on the other hand, has relied upon the following decisions :-

(1) Jayabharat Printers & Publishers Pvt Limited
versus
Labour Court, Kozhikode & Ors.
reported in (1994) II LLJ p-373;

(2) Tata Consulting Engineers
versus
Valsala K. Nair (Ms.) & Ors.
reported in (1997) II CLR 1099;

(3) Haryana Warehousing Corporation
versus
Presiding Officer, Labour Court-cum-
Industrial Tribunal, Rohtak & Another;
reported in (1998) II LLJ 505;

(4) Mahindra & Mahindra Limited
versus
Digambar G Pawaskar & Ors;
reported in (1997) I CLR 872;

(5) Madhya Pradesh Texbook Corporation
versus
Krishna Kant Pancholi & Anr.
reported in 1998 (80) FLR 54;

(6) D. Chenniah & etc.
versus
The Divisional Manager, A.P State Road
Transport Corporation & Ors.,
reported in 1987 Lab.I.C 1259;

(7) H.B Vinobha & Others
versus
The Managing Director, Hindustan Photo

Films & Others, reported in
1998 (78) FLR 857;

In the matter between Tata Consulting Engineers v. Valsala K. Nair (Ms.) & Ors. [Supra], the High Court of Judicature at Bombay has held that, `though the initial appointment was for a period of two months, it was extended from time to time and on facts as they are it cannot be said that the case was covered under clause (bb) of Sec. 2 (oo) and it cannot be said that workmen's termination was not retrenchment.' In the said matter, Sec. 25 (b) and Sec. 25-F of the I.D Act had also been considered in detail.

In the matter of Jayabharat Printers & Publishers Private Limited v. Labour Court, Kozhikode & Ors. [Supra], it is held that, `the nature of employment must be judged by the nature of duties performed and not on the letters issued by the employer. If contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of the duties is such that the colour of contractual employment is given to take it out from Sec. 2 (oo), then such agreement cannot be regarded as fair or bonafide and Sec. 2 (oo) (bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to employee.' It is further held that, `Sec. 2 (oo) (bb) has to be strictly interpreted and it is necessary to find out whether the letter of appointment is a camouflage to circumvent the provisions of the Industrial Disputes Act, which confers permanency to a worker who has continuously worked for 240 days.'

In the matter of Madhya Pradesh Textbook Corporation v. Krishna Kant Pancholi & Anr. [Supra], the Hon'ble Single Judge [Coram : D.M Dharmadhikari, J., as he then was] has held that, `An employee engaged for meeting rush or over-load of work or a contingency is an employee to whom the provisions of Sec. 25-F of the Act would be attracted and termination of his service without payment of retrenchment compensation would be void ab initio.' It is further held that, `the provisions of Sec. 25-F are applicable to all categories of employees including those employed on a daily rated basis or for seasonal work of an intermittent nature. All categories of employees putting in more than one year's continuous service are entitled to payment of retrenchment compensation as a condition precedent for their

`retrenchment' under Section 25-F of the Industrial Disputes Act.' The Court, in the said judgement has also observed that, `the Labour Court on facts has found that engaging the employees under appointment orders for 89 days successively with intermittent breaks is an act of unfair labour practice adopted by the employer and in case where unfair labour practice has been adopted, resort to the provisions of Sec. 2 (oo)(bb) cannot be allowed to be made.'

In the matter between Mahindra & Mahindra Limited versus Digambar G Pawaskar & Ors. [Supra], the Hon'ble Court of Judicature at Bombay has considered the provision of Sec. 2 (oo)(bb) of the Industrial Disputes Act, 1947. On the facts of the said matter, the respondent no. 1 was appointed as a Clerk-cum-Typist with effect from 1-1-198 for a specified period of 3 months, however, he continued on for such fixed period upto the end of August, 1988. He was not continued thereafter and as a result, he raised an industrial dispute and on reference, the Labour Court held that the termination to be retrenchment and not covered by clause (bb). The Labour Court directed reinstatement with full backwages. As such this writ petition wherein main contention is that the case is covered by clause (bb) of Section 2 (oo), the Court has held that the learned Judge was right in concluding that the termination amounted to retrenchment and in allowing reference.'

In the matter of D. Chenniah and etc. v. The Divisional Manager, A.P State Transport Corporation & Ors., [Supra], the learned Single Judge of the Andhra Pradesh High Court has held that, `Section 2 (oo)(bb) does not take in a stipulation in the contract of employment reserving a unilateral right by the employer to terminate the services of an employee at any time and that too without any notice and without assigning any reasons. It contemplates a contract which expressly provides for certain circumstances or situation in which the contract can be terminated.'

In the matter between Haryana Warehousing Corporation and Presiding Officer, Labour Court-cum-Industrial Tribunal, Rohtak & Anr. [Supra], the Division Bench of High Court of Punjab & Haryana has held termination of the workman concerned invalid. The Court therein has observed that, `unless clear case is made out, conditions precedent to retrenchment have to be fulfilled. Appointment was not shown to be for specific work. Nor was there evidence to show that it was on completion of work, services were dispensed with.'

In the matter of H.B Vinobha & Ors. v. The Managing Director, Hindustan Photo Films & Ors. [Supra], the learned Single Judge of Madras High Court has held that, `even though the petitioners are called `trainees' they are discharging regular work and their services are required. They have been paid over time allowances and increment also. Hence, the termination when the work is available will be invalid.' In the said matter, the petitioners were engaged as apprentice trainees and their initial appointment was for a period of one year, however, they continued for more than two years and all of a sudden their services was terminated and the junior were absorbed while seniors were discharged. The Court held that, such termination is retrenchment and not one under Sec. 2 (oo)(bb) of the I.D Act. The Court also observed that provisions of Sec. 25-F have to be followed in such cases.

Considering the submissions made by both the learned counsel appearing for the respective parties and authorities cited by them in support of their version, it is now necessary to consider the relevant provision of Section (oo) of the Industrial Act read with Clause (bb) thereto. The relevant section reads as under :-

`2 (oo) `retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;'

(c) termination of the service of a workman on the ground of continued ill-health;

The Apex Court in catena of decisions had interpreted this provision to mean that termination of service of an employer for any reason whatsoever which was covered by any of the exclusion clauses [(a), (b) and (c)] in the aforesaid definition would amount to `retrenchment'. The path breaking decision on this point is rendered in the matter of State Bank of India v. N.S Mani, reported in AIR (1976) SC 1111. Interpreting Section 2 (oo) as it stood prior to 18th August, 1984 in the light of its relevant exclusion clauses, Justice Krishna Iyer speaking for the Supreme Court in the aforesaid decision has made the following pertinent observations in para-8 of the report. The key to this vexed question is to be found in number 2 (oo) which reads as under :-

`For any reason whatsoever very vide and almost admitting of no exemption ... to retrench is to cut down. You cannot retrench without trenching or cutting. Section 2 (oo) is the master of the situation and the Court cannot turncate its amplitude. '

In paragraph 9, it has been observed that, `a break down of Section 2 (oo) unmistakably, extends nomination (sic) of retrenchment termination for any reasons whatsoever are the key words. Whatsoever be the reason, every termination spells retrenchment. Especially the sole question is has an employee's services been terminated ? Verbal approval apart the subsistence is decisive. A termination takes place where terms explains either by the active step of the master or the running out of stipulated terms. To protect the weak against the wrong, this policy of comprehensive definition has been effectuated. The termination embarrasses not merely the act of termination by the employer but the fact of termination howsoever produced'. This decision was constantly followed by the Supreme Court in the later decisions. A few of these may be mentioned at this stage. In the matter of -

(i) Hindustal Steel
v.
Labour Court
AIR (1977) SC 31;

(ii) Santosh Gupta
v.
S.B of Patiala
AIR (1980) SC 1219;

(iii) Management of K.S.R.T.C
v.
M. Borsinha
AIR (1988) SC 1320

(iv) Mohanlal
v.
Management, Bharat Electronics Ltd
AIR (1981) SC 1253.

In view of this constant trend of the decisions of the Supreme Court interpreting the then existing provisions of the term `retrenchment' as found in Section 2 (oo), the Legislation intervened by enacting further exclusive clause, in the scope of clause (bb). It, therefore, becomes obvious that the Legislature wanted to remedy the difficulty which was found in the then existing exclusion of Clause (a), (b) and (c) in Section 2 (oo) and that is precisely the reason why the substantive provision excluding from the operation of term `retrenchment' those occasions which were covered by clause (bb) was enacted.

The decision of the Apex Court in the matter of State Bank of India v. N. Sundar Mani [Supra], the Three-Judge Bench interpreting Sec. 25 F read with Section 2 (oo) of the I.D Act has been approved by the Constitution Bench in the case of Punjab Land Development & Reclamation Corporation Limited v. Presiding Officer, Labour Court, Chandigardh (1990) 3 SCC 682. This clause (bb) has been inserted by amending the Act of 1949 f 1984. It purports to exclude from the ambit of the definition of `retrenchment' - (i) termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or (ii) termination of contract of employment in terms of stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. The second part refers to such contract being terminated under a stipulation in that behalf contained therein. The expression `such contract' used in second part refers to contract of employment between the employer and the workman providing the mode and the manner of termination of service. Such termination of service has now specifically been excluded from the definition of `retrenchment' of this sub-clause. The cases contemplated under both the parts, therefore, will not be `retrenchment'. Conversely, a case not falling

within either of the parts of this sub-clause will be `retrenchment' falling within the main part of the definition. In other words, where in fact there is no non-renewal of the contract or there is no stipulation in the contract in that behalf, the termination of service will constitute `retrenchment'. Termination of service of a casual workman on daily wages will not fall within the exception contained in sub-clause (bb) of the Act because contract of employment is referable to the contract other than engagement of casual workers on daily wages. Non-renewal of the contract employment presupposes an existing contract of employment which is not renewed. The position, however, would be different when such a contract is in reality a camouflage for a more sustaining nature of arrangement but a mode of daily wager is obtained so as to avoid the rigors of the Act. This clause does not contemplate to cover a contract such as of a daily wager and is rather intended to cover more general clause of contract where a regular contract of employment is entered into and the termination of service is an act of non-renewal of contract. In case of Shailendranath Sukhla v. Vice Chancellor, Allahabad University, reported in (1987) Lab. I.C 1607, the Division Bench of Allahabad High Court has observed that, `sub-clause (bb) is in the nature of an exception to Section 2 (oo) and has to be construed strictly and in favour of the workman as the entire object of the act is to secure a just and fair deal to them while adjudicating the termination of service of a workman for non-renewal of the contract of employment on expiry of the time stipulated in the contract of employment. The nature of employment must be judged by the nature of duties performed by the workman and not on the basis of letters issued by the employer. Section 2(oo)(bb) cannot be extended to cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the workman as it would be unfair labour practice. If contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual employment is given to take it out from the clutches of Section 2 (oo) then such agreement cannot be regarded as a fair or bona fide. It is further observed that meaning of sub-clause (bb) is plain and simple but in a society with so wide gap where the bargaining power of employee is nil, is exposed to exploitation. The nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed by the employee. An agreement for arm twisting or hire and fire cannot be deemed to be included

in clause (bb) because if it is left to the employer not to renew the contract whenever he likes; irrespective of any circumstance, then the protection afforded to a workman by treating every termination of service as a `retrenchment' shall be rather nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employee which amounts to clear unfair labour practice. A similar view has been taken by the learned Single Judge of the Bombay High Court in the case of Dilip Hanuman Rao v. Jilla Parishad, Yavatmal, reprted in (1990) LIC 100 wherein the Court has held that mere fact that the contract employment provided termination of afflux of time would not by itself be sufficient to take such termination out of the scope of definition of `retrenchment'. The adjudicator has to address himself to the question as to whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of `retrenchment'. Likewise, the Single Judge of Punjab & Haryana High Court in Balbir Singh v. Kurukshetra Cooperative Bank Limited reported in 1990 (1) LLJ 443 has pointed out that this clause being in the nature of an exception cannot be given meaning which will nullify or curtail the majority of the principle clause because it does not intend to be an out let to unscrupulous employers to shrink out workmen in the garb of non-renewal of the contract even if the work subsist. The clause, therefore, has to be construed strictly in favour of the workman as far as possible. This prayer cannot be resorted to frustrate the claim of the employee against the uncalled for retrenchment or for denying the other benefits. In the matter of Madhya Pradesh Karmachari Sangh v. Syndicate Bank, reported in (1996) Lab. IC 1161; the learned Single Judge following the principles laid down by the Supreme Court as well as various High Courts in the matter of interpretation and application of the provisions has held that following rules shall be followed :-

(i) That the provisions of Sec. 2 (oo)(bb) are to be construed benevolently in favour of the workman;

(ii) That if the workman is allowed to continue in service by making periodical appointments from time to time then it can be said that the case would fall under Sec. 2 (oo)(bb);

(iii) That the provisions of Section 2 (oo)(bb) are not to be interpreted in the manner in which it may stifle the main provision;

(iv) That if the workman continues in service, the non-renewal of the contract can be deemed as a malafide and it may amount to a fraud on constitution;

(v) That there would be a wrong presumption of non-applicability of Sec. 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which the workman has been appointed had come to an end.

Similarly, the contract employment or in cases of statutory corporations or Government undertakings the statutory rules or regulations governing the service provide for service of an employee can be terminated by giving notice of specific period of time either side or payment in lieu thereof. In some cases even unilateral provisions that the service of an employee can be terminated at any time without assigning any reason are inserted in such cases, the Apex Court in West Bengal State Electricity Board v. Shri Desh Bandhu Gosh [1985] 1 LLJ 373 struck down regulation 34 of the West Best Electricity Board regulation which empowered the Board to terminate service of the employee by giving three months notice or three months' salary in lieu of the notice being violative of Article 14 of the Constitution. The Apex Court has observed that, `on the face of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked hire and fire rule.' Likewise, in the Central Inland Water Transport Corporation Limited v. Brojonath Ganguly [1986] II LLJ 171 and in case of Delhi Transport Corporation Limited v. DTC Mazdoor Congress (1991) 1 LLJ 395 has observed that Regulation 9 (b) of the Corporation which provided for termination of employment by giving one month's notice or pay in lieu thereof vest absolute unbridled and arbitrary powers in the employer to terminate the service and as such was violative of the Constitutional mandate contained in Article 14 of the Constitution. The effect of this dicta or observation of the Apex Court is that any stipulation in a contract of employment fixing the term of employment or providing for termination of service by giving a notice for certain specified period of time or payment of wages in lieu there of will be void, arbitrary and discriminatory and also being opposed to the public policy under Sec. 23 of

the Contract Act. Similarly, the termination of employment by non-renewal of the term of contract will not have the protection of sub-clause (bb) of Section 2 (oo) of the Act.

In case of Jaibharat Printing & Publishers Private Limited v. Labour Court, Kozhikode & Ors, reported in (1994) II LLJ 373, the Kerala High Court has considered the very same provision while considering the reported decision of the Bombay High Court in the matter of Dilip Hanumantrai [Supra] and has observed that, `the nature of employment must be judged by the nature of duties performed and not on the letter issued by the employer, if contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties are such that the colour of the contractual employment is given to take it out from Sec. 2 (oo) then such an agreement cannot be recorded as a fair or bonafide and Sec. 2 (oo)(bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employee. Similarly, in case of Chairman-cum-Managing Director, Orissa State Road Transport Corporation Limited v. Rameshchandra Gowda, (1994) II LLJ 1127, it is held that, `it is a well known that exception to a general rule which too receive a rigorous interpretation and only governs specifically the statutes covered by them and no further and the exception in clause (bb) covers only persons who have regular contract with the employer but it is not renewed and does not comprehend casual workers. In case of Vadodara Municipal Corporation v. Gajendrabhai reported in (1996) 1 LLJ 206, this Court has considered the question that when the appointment order when issued speaks of a fixed term appointment and yet service on expiry of such term did not come to an end automatically on expiry of the contract but the workman was continued on the post without any order. Once the workman appointed ceases to be on a fixed term appointment subsequent issuance of an order giving a fixed term appointment with retrospective effect will not attract the provisions of Sec. 2 (bb) of the Act. In case of Alexander Yesudes Mikal v. Perfect Oil Seeds & IRP & Others, reported in 1996 (1) LLJ 533, the Bombay High Court has observed that it is erroneous to say that the employee's service come to an end by the contract running out. The first contract ran out on the expiry of six months from April, 1985 viz., on October 18, 1985. Admittedly, the employee was not removed from service with the expiry of six months but was allowed to continue

in service as before till his service was expressly terminated by the order dated November 22, 1985. Even the second period of service ended on 1st May, 1986. The petitioner was not removed on that day but was allowed to continue till May 31, 1986 when he was removed from service. The termination letter issued did not mention that termination was effected in accordance with clause (bb) of Sec. 2 (oo) of Industrial Disputes Act, 1947. In any event, one cannot loose sight of the fact that clause (bb) has itself been retrospectively interpreted and judicial conscience is that if the post continues and the work continues, clause (bb) cannot be said to be operated as a charter for unscrupulous employer jettison their workmen.

In case of Nathulal Saini v. Hindustan Copper Limited & Anr., reported in 1995 (1) LLJ 421, the Rajasthan High Court has observed that effect of insertion of Sec. 2 (oo)(bb) is that now the termination of service which takes place on account of conditions contained in the contract employment or expiry of termination of the contract employment are not covered by the definition of `retrenchment' as given in substantive part of Sec. 2 (oo). An employee appointed on fixed term cannot now claim that his service has been terminated by retrenchment merely because the employer has not extended the term of contract of employment. This clause, however, cannot be stretched to cover the cases where the termination of service is brought to an end on happening of an event which falls within the ambit of misconduct or where an action is taken by the employer for termination of service by way of striking of name on account of alleged unauthorized absence of the employee from service. In case of Ramkishan v. Smart Ashok Technical Institute, Vidisha reported in 1995 (1) LLJ 944, the Madhya Pradesh High Court has observed that the exception occurring in clause (bb) of Sec. 2 (oo) of the Act is limited to those cases where the work itself is of temporary character and was over. Only in those circumstances, the employer could employ the workman with the bonafide and genuine intention for satisfying the temporary need and those cases would only fall within the excepted category. Sec. 2 (oo) has to be read as a whole and construed to carry forward the spirit of Industrial Disputes Act meant for avoiding exploitation of the workman in the garb of contractual obligation, as appearing in the exception clause. Now, even once an employee completes 240 days of employment and if his last letter of appointment or renewal contains automatic clause stipulating termination of his service, the right accrued to the employee cannot be taken away by applying

the exception clause (bb) of Sec. 2 (oo), which would still be retrenchment.

Now, in case of Gujarat State Road Transport Corporation v. Workmen of State Transport Corporation, reported in 2000 LLR 182, this Court has observed that continuous employment on casual or temporary basis and denial of permanency notwithstanding existence of permanent work would amount to unfair labour practice and it is also denial of right to life and livelihood with dignity. It is also necessary to consider that what is a real meaning of `retrenchment'. To retrench is to cut down. You cannot retrench without stretching or cutting. Any other view would result in shrinkage rather in swallowing the principle clause of Sec. 2 (oo). ... The employer cannot steal away the employees' umbrella provided by Sec. 2 (oo), 25 (b) read with Sec. 25-F of the Act by serving an employee the last letter of his appointment or renewal with the stipulation of termination of service under the contract so as to bring the termination within the excepted category and to snatch it out from the purview of retrenchment. If the appointment for fixed period is established, in such case, the employer has misused the power and by appointing for a fixed period was a colourable exercise of power then Sec. 2 (oo)(bb) is not applicable. If the appointment letter was a mala fide or this was done precisely to avoid the benefit to workman under the Labour Laws than Sec. 2 (oo)(bb) is not applicable.

Considering the view of the Apex Court and the various High Courts, Section 2 (oo)(bb) cannot be resorted to when employer has exercised power in a malafide, arbitrary and abused/misused the power with a view to see that the workman may not be entitled to the benefit and protection available under Sec. 25-F of the I.D Act. However, merely because employer has a right to terminate the service of an employee by satisfying the three conditions enunciated under Sec. 25-F of the Act the same cannot give him an unrestricted right. It is the duty of the employer to establish the fact that such termination is justified in the circumstances of the case. So, without justification of such termination, even in case of complying the provisions of Sec. 25_F such termination is bad, malafide, arbitrary and amounts to unfair labour practice. It is clear that Sec. 25-F has given no positive and unregulated right of retrenchment to the employer. They impose condition precedent before making retrenchment. It is noteworthy that the language of section 25-F is couched in a negative form. The section does not expressly provide

that on compliance of the three conditions referred to in the section, the employer shall have an unrestricted right to retrench the workman. The unjustified retrenchment seems to have been effected more in furtherance of a plan to get good reduance of elements deemed undesirable .. .. .. The language of this Sec. 25-F is significant. The termination of service in colourable exercise of power or a result of victimization or unfair labour practice or caprice should be prevented as otherwise some of the fundamental rights and principles which have been noticed above would be violated. Arbitrary conduct or unnecessary harshness on the part of the employer, judged by the normal standard of a reasonable man may be cogent evidence of victimization or unfair labour practice. It is open for the employee to question the `retrenchment' even in case of compliance of Sec. 25 F of the Industrial Disputes Act on the ground of want of benefit or victimization or unfair labour practice or caprice or unnecessary harshness of the employer. Therefore, in such circumstances, the employer shall have to satisfy the Court that there is a compliance of Sec. 25-F of the I.D. Act, 1947 and also to satisfy that there is no malafide, arbitrariness, unnecessary harshness, unfair labour practice or victimization while terminating the service of the workman, and in such cases, the Labour Court shall have to consider these aspects also, while adjudicating the Industrial dispute against the termination of workman. Mere compliance of Sec. 25-F cannot prove or held that termination is bona fide and genuine. Now, in view of the above observations, the facts of the present case are required to be considered.

In the present petition, there is an undisputed fact that the respondent-workman was in service for the period from 13-3-1990 to 21-3-1991 as a Trainee and such training period was not under the provisions of Apprenticeship Act, and during this period of 12 months, the respondent-workman was employed under six separate orders, and thus, she had put in 240 days continuous service, and therefore, the respondent-workman was an employee within the meaning of Sec. 3 (13) of the BIR Act, 1946. Not only that, the respondent-workman was appointed as a temporary Jr.Clerk in the Bombay Market Branch of the petitioner-Bank from 23.3.1991 to 3.2.1992 with notional breaks of one or two in between, and during this period also, she had completed 240 days continuous service with the petitioner-Bank. Alongwith the affidavit-in-reply, the respondent-workman has produced on record copy of the Appointment Orders, which are placed on record from page nos. 82 to 96. The said

appointment orders appears to be made in the prescribed forms with a view to avoid the rigor of Sec. 25-F of the I.D Act. There is also an undisputed fact that the five lady employees appointed alongwith the respondent-workman have been subsequently absorbed by the petitioner-Bank and they have been confirmed in service. Punitaben Khushmanbhai Patel was appointed as a Clerk-cum-Cashier-cum-Typist/Field Worker in the Bombay Market Branch on 29.10.1990 and she continued upto 20.1.1993 as a Trainee, and thereafter she was appointed as a Temporary Clerk from 22.1.1993 to 3.5.1995 and thereafter her appointment was made on probation from 5.5.1995 to 4.11.1995 and later on, on 6th November, 1995 she was confirmed in service as such. Now, comparing these dates with Punitaben Patel, the respondent-workman was appointed as a Trainee on 13.2.1990 in the very Branch of the petitioner-Bank on 13.2.1990 as a Clerk Cum Cashier cum Typist and she was appointed as temporary employee from 23.3.1991 to 3.2.1992. Therefore, said Punitaben Patel is junior to the present respondent-workman. Therefore, once the junior employee continues and the senior' service has been terminated on 3rd February, 1992, the said action on the part of the petitioner-Bank cannot be said to be reasonable. This action on the part of the petitioner-Bank appears to be malafide, victimization or colourable exercise of power resulting into termination by non-renewal of the contract. It is also important to have a look at the chart given by the petitioner-bank wherein details of duration as a Trainee, Temporary, Probationary and confirmation is given with respect to the other lady employees of the petitioner-Bank. The said details are reproduced hereunder :-

Name of employees	Branch	Duration as Trainee	Duration as Temporary	Duration as Probation	Date of Con-
Ashaben K. Pachchigar	Khatodra	1.1.90 to 5.1.91	8.1.91 to 18.8.93	20.2.93 to 18.8.93	20.8. 1993
Punitaben K. Patel	Bombay Market Branch	29.10.91 to 20.1.93	22.1.1993 to 3.5.1995	5.5.1995 to 4.11.95	6.11. 1995
Dharmishta R Jinwala	Khatodra	24.11.90 to 3.1.1992	6.01.92 to 29.9.94	1.10.94 to 31.3.95	3.4. 1995

Vaishali K. Bookseller	Head Office	10.11.90 to 27.11.91	29.11.91 to 27.4.91	29.4.94 to 28.11.94	29.11 1994
Jigisha C. Panwala	Khatodara	4.6.92 to 24.6.1993	26.6.93 to 24.8.95	26.8.95 to 25.2.96	26.2. 1996

These details were also furnished before the Labour Court, and the Labour Court has considered the same in light of the deposition made by Pratibaben Pachchigar, Exh. 34. The said witness has confirmed that the above lady workmen have been absorbed in permanent service on the date of confirmation given hereinabove. That, all the aforesaid persons were appointed in a similar fashion as that of the respondent workman but except the respondent workman, all other five lady have been confirmed in service. Thus, the respondent-workman has been singled out. Therefore, termination of the respondent-workman is not covered by exception of Clause (bb) of Sec. 2 (oo) of the Industrial Disputes Act. It is also an undisputed fact that in the very Branch of the petitioner-Bank, a new employee was recruited on the same post by the petitioner-Bank. So, in the present case, at the time of termination, junior employees worked on the same post and subsequently in the same post, a new employee was appointed by the petitioner Bank and therefore, it proves that this is not a bonafide agreement or contract of employment which gives absolute power to the employer to terminate service of the respondent workman by not renewing the contract of service. Thus, looking to these undisputed facts, the contract of employment does not appear to be a genuine one. The action of termination amounts to clear misuse and abuse of power which amounts to victimization and unfair labour practice adopted by the petitioner-Bank.

The learned advocate for the petitioner has heavily relied upon some of the decisions of the Apex Court and this High Court in the matters of M. Venugopalan [Supra] and of Rameshwar Gahlot [Supra]. In the matter of M. Venugopalan [Supra], it was a case of a Probationer and considering the provisions of Regulation 14, the Apex Court has observed that the result whereof will be the termination of service of the appellant shall not deemed to be retrenchment within the meaning of Sec. 2 (oo) even if sub-Sec. (bb) had not been entertained in the said Section. The termination of service of appellant during the period of probation is in terms of

the order of appointment, read with Regulation 14 of the Regulations which shall be deemed to be now Rule 48 (2)(oo) of the Corporation Act. So, it was not a case of temporary employment but it was a case of a Probationer and considering the provisions of Regulation 14 and also considering the question of conflict with the Rules framed under 48 (2)(oo), read with Sec. 2 (oo)(bb), the Court has observed that in such circumstances, the termination of probationer cannot be considered to be a retrenchment. In case of Rameshwar Gehlot [Supra], the Apex Court in terms has observed that if the appointment for fixed period is there, then termination in accordance with terms of such appointment is not illegal but termination would be illegal only when it is established that the management has misused its powers or appointment for fixed period was a colourable exercise of power. Learned Sr. Advocate has also placed reliance upon the following four decisions - they are :

Parshottambhai R Kachariya
v.
State of Gujarat & Ors.
2000 (1) GLH 553;

Executive Engineer, R&B
v.
Rameshkumar K. Bhatt
2000 (1) GLH 263;

Dy. Exective Engineer, Gujarat Maritime Board
v.
Hasmukh M. Jasani
2000 (1) GLR 367; and

Kana Ruda Barvad
v.
Gujarat Water Supply & Sewerage Board
2000 (1) GLH 263.

In case of Kana Ruda Barvad [Supra], the principle which has been decided by this Court is that termination on the ground of non-availability of work and result of closure of a project whether he is entitled to reinstatement or not. It is also observed by this Court that employer is entitled to terminate the service of its employees in terms of the order of appointment which confers power to take action in terms thereof. In case of Dy. Executive Engineer, Gujarat Maritime Board [Supra], it was a case of appointment for a fixed period

on purely temporary basis which was extended from time to time and service was terminated after completion of the project. In the said decision, this Court has considered the case of M. Venugopalan [Supra], Ramesh Gehlot [Supra], Uptron Limited [Supra]. In the said decision, the Court has observed that there is nothing on the record to show that the order of termination was malafide or it was passed in colourable exercise of powers conferred on the authority of the petitioner. In case of Executive Engineer, Roads & Building v. Ramesh Bhatt [Supra], it was a case of appointment made in the post of Driver purely on temporary basis. Government stopped paying grant. One division and three sub-divisions were closed and Sec. 25-F would not apply to a person who was employed for a fixed term. Only the power is misused or vitiated by its malafide exercise of power. The Termination cannot be held illegal. In the said decision, decision in the matter of M. Venugoplan & Gehlot [Supra] has been considered by this Court. In case of Purshottambhai R Kachariya [Supra] which was a case of a daily wager appointed for fixed period and given break, post on which he worked while working on a workcharge employee. In that case, it was the only contention raised by the petitioner that said termination was violative of Sec. 25-F of the I.D Act but no submissions were made in respect to the fact that the employer has misused the power and termination is vitiated with malafide. No such contention was raised before this Court and after considering the case of M. Venugopalan & Ramesh Gehlot, this Court has held that irrespective of length of service, termination would not amount to retrenchment if there is a provision under the said contract for termination of employment. The learned Sr. Advocate has thus submitted that if the appointment has been made on periodical basis and a stipulation has been provided and by afflux of time if the service has come to an end, that covers the exception clause (bb), and therefore, it does not amount to `retrenchment'. Now, the view taken in Ramesh Gehlot's case is also required to be considered because in that case there were no allegations about the misuse of power by the employer or vitiated the termination order by colourable exercise of power or arbitrary and/or malafide action. Therefore, none of the authorities are of any help to the petitioner. According to my opinion, the Labour Court as well as Industrial Tribunal have rightly considered two aspects viz., that at the time of termination of the respondent-workman, juniors have been retained in the same category and that subsequent to the termination of the respondent-workman, new employee on similar terms had been appointed by petitioner-Bank. Further, the

Industrial Tribunal in paragraph no. 14 of its order has elaborately observed that Dharmistaben remained in service after the termination of the respondent, and Punitaben also was retained in service after the termination of the respondent, who was junior to the respondent, though the work was of continuous and permanent nature. So, the malafide misuse of power and arbitrariness and colourable exercise of powers are proved. Therefore, considering the decision of Apex Court in the matter of Ramesh Gehlot [Supra], the exception of sub-Sec. (bb) is not applicable in the present case and the respondent who has completed 240 days continuous service is entitled to the benefit of protection under Sec. 25-F of the I.D Act, and therefore, the said termination order has rightly been quashed and set-aside by the Labour Court and duly confirmed by the Industrial Court.

Learned Sr. Advocate has also placed reliance upon the two decisions in the matters of Sur Enamel & Stamping Works (P) Limited, [Supra] and Mohanlal v. Management, Bharat Electronics Limited [1981] SC 1253. In the matter between Mohanlal [Supra], the Apex Court in paragraph no. 13 has observed as under :-

> `13. In Sur-Enamel & Stamping Works (P) Limited v. Their Workmen, (1964) 3 SCR 616 : referred to Section 25B as it then stood read with Sec. 2 (eee) which defined continuous service, this Court; at page 1916 of AIR has held as under :-
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> The position therefore is that during a period of employment for less than 11 calender months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Sec. 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that during those 12 calender months had worked for not less than 240 days. Where, as in the present case, the workman have not at all been employed for a period of 12 calender months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirement of Sec. 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days.' If section 25B had not been amended, the interpretation which it received in the aforementioned case would be binding on us.

However, Section 25-B and Sec. 2 (eee) have been the subject matter of amendment by the Industrial Disputes (Amendment) Act, 1964. Section 2 (eee) deleted and Section 25B was amended. Prior to its amendment by the 1964 Amendment Act, Sec. 25B read as under :-

`For the purpose of Sections 25C and 25F a workman who during the period of 12 calender months has actually worked in an industry for not less than 240 days, shall be deemed to have completed one year of continuous service in the industry'.

`14. We have already extracted Sec. 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma v. Central Government Industrial-cum-Labour Court, New Delhi (1980) 4 SCC, Chinnappa Reddy, J. after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Limited case (AIR 1963 SC 1914) held as under :-

`These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in service of the employer for one whole year'.

In a concurring judgment, Pathak, J. agreed with this interpretation of Sec. 25B (2). Therefore, both on principle and on precedent, it must be held that Sec. 25B (2) comprehends a situation where a workman is not in employment for a period of 12 calender months but has rendered service for a period of 240 days within the period of 12 months commencing and counting backwards from the relevant date i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one

year for the purpose of Section 25B and Chapter VA."

Thus, all the contentions raised by Mr. Patel have been answered in the aforesaid decision itself. Further, it is necessary to consider the fact that the respondent workman had served from 13.3.1990 to 31.3.1991 as a Trainee and this period is also considered as employment. Therefore, when this period is included together then it is proved that the respondent was in service for more than one year, and therefore, this contention on facts will not be of help to the learned advocate for the petitioner-Bank.

The third contention raised by Mr. Patel was with respect to separate entity of the Branches of the petitioner-Bank. It was contended that each Branch of the petitioner Bank is having separate establishment and no control is exercised by the Head Office and there is no connection with the Head Office, and therefore, any appointment in different Branches subsequent to the termination of respondent and at the time of termination in a different Branch, if any junior employee is continued it will not attract the provisions of Sec. 25-F, 25-G, and 25-H of the I.D Act, 1947. Now, this contention about different Branches having different entity and establishment has been considered at length by the Apex Court in the matter of Transport Corporation of India v. ESI Corporation & Another, reported in 2000 (1) LLJ p-1 wherein it is held that, `...once the definition of the term `Employee' as found in Sec. 2 (9)(i) read with the inclusive part thereof, is read in juxtaposition with Sec. 38, it becomes at once clear that as the Transport Corporationof the India's establishment, namely the Road Motor Transport establishment is covered by the Employees' State Insurance Act, all its employees, whether working in the Head Office or at its branch offices in any part of the country, including the State of Maharashtra would get entitled to be insured as per the beneficial provisions of Section 38.' In paragraph 9 of the said judgment, the Court has observed that, `..When Section 40 (1) is read in the light of the definition of the term `immediate employer' as found in Section 2 (13) and the term `principal employer' as found in sub-section 17 (iii) of Section 2, it would be clear that the Transport Corporation of India being the principal employer of the employees at Bombay branch, cannot escape from its liability to paythe contribution, in the first instance even though the Bombay branch employees are employed by the immediate employer, being local agent of the Transport Corporation of India

principal employer stationed at Secunderabad in Andhra Pradesh. In fact, so far as Tansport Corporation of India is concerned, employees of its Bombay Branch even though working under its local Manager, have a direct nexus with the Transport Corporation of India being the principal employer or the main employer who can be said to be directly employing the employees at the Bombay branch. In fact, there is no immediate employer in between the Transport Corporation of India on the one hand and its Bombay branch emploeyes on the other. The question of immediate employer would arise only when the employees are working under a Contractor who carries out the work of the principal employer under the Contract. Since the employees are employees of Transport Coporation of India, though working in different branches of the TCI, in different parts of the country, there is no escape on the conclusion that once Transport Corporation of India having its Head Office at Andhra Pradesh is governed by the Act, its branch offices also will automatically get governed by the sweep of the Act by the very same notification.'

Therefore, in view of the recent decision of the Apex Court; though it being a case under the ESI Act, the principles governing interpretation of the Labour Legislation has been rightly considered by the Apex Court that even different branches having no connection with the Head Office and considering the functional integrity and being under the direct supervision and control of the parent office would be part and parcel of the main establishment and all such branches shall have to be treated as a miniatures of the main office. Therefore, that contention of the learned Sr. Advocate is not required to be accepted.

The last contention which has been raised by learned Sr. Advocate is with respect to the fact that in reply to the approach notice given by the petitioner Bank to the respondent, even reply to the application before the Labour Court, it was contended by the petitioner Bank that service of respondent was not satisfactory but there is nothing on record; except in two or three orders of trainee wherein some remarks have been made by the petitioner Bank in respect to unsatisfactory working but in respect to the appointment as a Temporary employee, there was no such remark made in the orders. However, it was contended by the learned Sr. Advocate that the work of respondent was not found to be satisfactory. Undisputedly, for non-satisfactory work also, no notice or memo had been given to the respondent nor any departmental inquiry was initiated in that regard.

Recently, in the matter of V.P Ahuja v. State of Punjab & Ors., reported in 2000 AIR SC Weekly 792, it has been observed that probationer's service is also entitled to certain protection and his service cannot be terminated arbitrarily nor can those services be terminated in a punitive manner without complying with the principles of natural justice. Therefore, if the work of the respondent was not found to be satisfactory, then it was the duty of the petitioner Bank to hold some inquiry and afford reasonable opportunity to the respondent before terminating her services. Therefore also, the said contention with respect to unsatisfactory performance of the respondent workman is required to be rejected, in view of the recent decision of the Apex Court; as referred to hereinabove.

After considering the submissions of both the learned advocates and after perusing both the orders made by the Courts below, I am of the opinion that the Labour Court has not committed any error and there is no infirmity in the orders passed by both the Courts below. It is also a settled law laid down by the Apex Court and various High Courts that this Court in exercise of the powers conferred under Art. 226 & 227 of the Constitution cannot act as an appellate authority and reappreciate the evidence. Further, as observed by the Apex Court in a reported decision in the matter of Khalil Ahmed Bashir Ahmed v. Tufelhusseain Samirbhai Saranpurawala [AIR (1988) SC 184] where two views are possible and the trial Court has taken one view which is plausible, merely because another view contrary is possible and not perverse, in such circumstances, the High Court should not interfere with the findings of the trial Court under Art. 227 of the Constitution.

Therefore, considering the above settled principles of law laid down by the Apex Court as well as various High Courts, according to my opinion, the Labour Court has not committed any jurisdiction error or procedural error apparent on the face of the record and Labour Court and Industrial Court has functioned within the limits of its authority and the findings given by both the Courts is based upon the evidence and it is not perverse. Further, there is no manifest error apparent on the face of the proceedings and there is no clear ignorance or disregard of the provisions of law and both the Courts have applied its mind and there is no contradictory conclusion in respect to finding of fact. Accordingly, when there is no error apparent on the face of the record committed by both the Courts below, I dismiss this writ petition. Accordingly, this petition

stands dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated with no order as to costs.

Now, when this petition is dismissed, on the grounds aforesaid, the respondent workman is entitled to get all the benefits awarded by the Labour Court. Further, it is observed that the respondent workman is out of job since 3rd February, 1992 and more than 8 years have elapsed in-between, and therefore, according to my opinion, if the petitioner Bank is directed to implement the Award of the Labour Court within some reasonable time, then the ends of justice will be met. Accordingly, I am directing the petitioner Bank to implement the order passed by the Labour Court in T-Application No. 249 of 1992 dated 11.2.1998; duly confirmed by the Industrial Court vide its order dated 31st August, 1999, within a period of six weeks from the date of receipt of certified copy of this judgment. Office is directed to sent the writ of this order forthwith.

{H.K Rathod, J.}

Prakash*